

Work Plan

for Pesticide Use Enforcement Activities

by

Department of Pesticide Regulation

and the

County Agricultural Commissioner

for

Sonoma County

Years 2011-2013

Enforcement Work Plan Calendar Years 2011-2013

Resources

Personnel:

- 1 – Chief Deputy Agricultural Commissioner (part-time PUE responsibilities)
- 3 – Deputy Agricultural Commissioners (part-time PUE responsibilities)
- 12 – Agricultural Biologists (part-time PUE responsibilities)

Facilities/Equipment/Resources:

- One main office (Santa Rosa) and two district offices (Sonoma and Petaluma)
- Each staff member has a computer, vehicle and cell phone assigned to them

Sonoma County is divided geographically into three districts. A deputy Agricultural Commissioner is in charge of each geographical area. Although all deputies and biologists work in the Pesticide Use Enforcement (PUE) program, no one works full-time in PUE. The department is involved in a multitude of programs and continually assesses what programs are most vital for staffing decisions. A Deputy Agricultural Commissioner is responsible for overseeing the program. The deputy provides guidance to staff regarding PUE questions, concerns, regulation updates, etc. We have divided the program into two parts; agricultural production and commercial applicators. The commercial applicator program includes structural pest control businesses, non-production agricultural pest control businesses, and pest control advisors.

Workload

Sonoma County PUE program workload for the FY 2009-2010:

- 8,022 total hours expended
- 180 inspections conducted
- 196 restricted materials permits issued
- 459 operator identification numbers issued
- 24 investigations completed
- 233 notices of intent reviewed
- 188 pest control businesses registered
- 70 pest control advisors registered
- 86 structural pest control operators registered

In 2010 European Grapevine Moth was discovered in Sonoma County. This is a major pest of grapevines and risk to the economic viability of the largest agricultural commodity in Sonoma County. The risk this new pest poses and the urgency needed in response led to a redirecting of resources to the detection of the European Grapevine Moth and a reduction in time spent in PUE.

We had four retirements in our Agricultural division during 2010. Included in the retirements were: a Biologist, a Deputy Agricultural Commissioner, and our Assistant Agricultural Commissioner. We are currently recruiting for an Assistant Agricultural Commissioner, and have two new-hire Biologists. We anticipate a reduction in PUE activities in 2011 due to training new Biologists and budget constraints along with the necessity of responding to the European Grapevine Moth. We estimate that we will spend 4,900 hours of licensed staff time in PUE activities in 2011.

We are committed to performing the activities outlined in our core program given staffing levels, available resources, and other department program obligations. Activities are prioritized based on the protection of people and the environment. We determine which activities to concentrate on by taking into account past violations, restricted materials, worker health and safety, and other risk-benefit factors. Efforts are concentrated on repeat and serious offenders, especially those dealing with worker health and safety, the public, and the environment.

Other desirable activities include outreach to growers, licensees, the public, and pesticide use report follow-up. These activities are performed as staffing and resources allow, and as long as they support overall objectives of the program.

Restricted Materials Permitting

Our biologists are licensed in pesticide use enforcement, and are knowledgeable concerning local farming practices, specific locations, sensitive sites, and hazards. Prior to permit issuance, the applicant must qualify to apply/supervise the application of restricted materials, by providing a valid Private Applicator's Certificate or State applicator license. Permits issued to the property operator are signed by the operator or authorized representative. Before issuing a permit, the applicant's file (i.e. previous year's permit, pesticide use reports, maps, etc.) is reviewed for noncompliances or other concerns. Alternative considerations and mitigation measures are discussed before permit issuance. Restricted material permit conditions addressing specific hazards or concerns are reviewed with the permittee.

One, two, and three-year permits are issued to growers depending on the type of crop grown, previous noncompliances, type of restricted material used, etc. Permit applicants with a history of noncompliance are issued single year permits. All permits issued and denied are reported to Department of Pesticide Regulation on the Pesticide Regulatory Activities Monthly Report (PRAMR). Applicants for which permits have been denied are given due process.

Notices of Intent (NOIs) may be submitted by phone, fax, voicemail, or in-person. All NOIs are reviewed. Generally, NOIs must be submitted at least 24 hours in advance of the application to allow for adequate review of the notice. When a NOI is submitted, the NOI is checked to ensure it is current and consistent with the permit. The proposed application site and surrounding sites are evaluated to assess the level of risk and to determine whether there are any mitigation measures necessary to minimize adverse impacts to human health and the environment. The NOI review may include a review of the permit in our office and/or a field pesticide pre-application site inspection.

All permit files contain maps of the sites on the permit and most sites have GIS maps with aerial photography overlays. All maps include information on adjacent areas. Maps are one way in which sensitive sites may be identified. General and or site specific permit conditions may be added to the permit based on proximity of sensitive sites that could be impacted by an application. These conditions are reviewed at the time of permit renewal and, if necessary, modified to mitigate environmental, health or economic impacts.

Private Applicator Certificates may be issued to property operators, authorized representatives or employees. To obtain a Private Applicator Certificate the applicant must initially pass a written examination as required by regulation. When renewing a Private Applicator Certificate the applicant has the option to prove having obtained the required amount of continuing education or they may take the renewal test.

Our Restricted Materials Permitting Program will be reviewed annually or more frequently as needed to ensure our stated goals are being accomplished in accordance with the DPR guidelines.

Goals/Objectives

- Issue permits as required by the California Food and Agriculture Code, the California Code of Regulations and guidelines from the DPR
- Report all permits issued and denied and Private Applicator Certificates issued on the Pesticide Regulatory Activity Monthly Report (PRAMR)
- Issue Private Applicator Certificates as required by the California Food and Agriculture Code, the California Code of Regulations and guidelines from the DPR
- Review and log all submitted NOIs

Site-Monitoring Plan (Restricted Materials)

When a Notice of Intent (NOI) is submitted, a deputy agricultural commissioner or biologist reviews the NOI and the permit file for sensitive sites or other possible hazards. When only on-site evaluation will allow appropriate assessment of risk, the department will conduct a pre-application site inspection. As necessary, additional mitigation measures are discussed with the authorized representative for the permit. Our pre-application site inspection goal is 5% of restricted material applications for agricultural use.

Few non-agricultural permits are issued in Sonoma County (6-15 permits per year). For non-agricultural permits, NOIs are required to the extent necessary to allow at least one inspection per annum.

High priority is given to the following aspects of our site-monitoring program:

- Pre-application site inspections for soil fumigants. Our goal is 100% pre-application site inspections for soil fumigations due to the complexity of the conditions and potential for human and environmental hazard
- 2,4-D pre-application site inspections due to potential for environmental hazard
- Pre-application site inspections for any restricted material applied by air due to drift potential

All other restricted materials NOIs are prioritized for pre-application site inspections depending upon material, hazard potential, location of sensitive sites, and history of the applicator.

Objectives/Goals

- Report number of inspections performed on PRAMR and maintain inspections in files
- Record all NOIs submitted on log and PRAMR
- Report number of NOIs denied on PRAMR
- Complete pre-application site inspections on at least 5% of agricultural restricted material applications

Compliance Monitoring

Effective and comprehensive compliance monitoring is essential to assuring the safety of pesticide handlers, fieldworkers, the public, and the environment. Compliance monitoring includes pesticide use and records inspections, episode and complaint investigations, and surveillance.

Comprehensive Inspection Program

A PUE deputy is in charge of the PUE program. We have the workload divided into two categories: general PUE and commercial applicator team. The commercial applicator team deals in workload associated with structural pest control and non-agricultural pest control businesses. Biologists are familiar with areas in which they work, knowing local conditions, operators, pesticides used and sensitive sites. The district deputies work closely with biologists and each other to provide guidance and ensure proper decisions are made. In complex situations the chief deputy will provide input to the decision making process.

We have established internal goal numbers for inspections which are assessed as needed to meet core program elements. The number of inspections is assessed and adjusted during the year to respond to noncompliance trends, new regulations, and when necessary, staffing changes and new workload. Goal adjustments will be considered with an emphasis on worker and environmental safety. We have identified four priority areas for use monitoring: field fumigations, structural fumigations, restricted materials applications, and employee performed applications.

Field inspections may be recorded on paper inspection report forms or in the AIRS electronic inspection program. All inspections are entered into AIRS to allow greater ease in tracking and to allow queries to be performed which give insight into noncompliance trends, program evaluation and goal setting.

The majority of pesticide use monitoring and fieldworker inspections result from unannounced field surveillance. Growers and businesses with a history of noncompliance are a focus for increased surveillance and inspections. Sensitive sites are given increased surveillance, such as sites near schools, high traffic roadways, and areas receiving complaints. In addition, aerial applications are given high priority for inspections due to drift potential.

Headquarter inspections are used as follow-ups to noncompliances found during field inspections. As staffing allows, routine headquarter inspections are also conducted. Decision to inspect is based on the following criteria:

- they have employees
- business has a restricted materials permit
- they hold an operator Identification number
- are a pest control business
- business has had noncompliances in the past

Pesticide dealer inspection frequencies are based on noncompliance history.

Biologists are trained to use the Pesticide Use Enforcement Program Standards Compendium Volume 4, Inspection Procedures. The PUE deputy tracks inspections that require follow-up action. Inspections are counted on PRAMR, and copies of inspections are submitted to DPR with PRAMR. Compliance actions will also be counted on PRAMR.

Goals/Objectives

- Detailed documentation of all violation elements found during inspections on inspection record forms
- Enter all inspections performed into the AIRS database
- Copies of inspections submitted to DPR with PRAMR
- Continued education for biologists on how to fill out the inspection forms
- Data consistency between field inspection forms and AIRS

Investigation Response and Reporting Improvement

DPR and the County Agricultural Commissioners have the responsibility to investigate episodes that may involve potential or actual human illness or injury, property damage, loss or contamination, and environmental effects alleged to be the result of the use or misuse of a pesticide.

Current Program

All investigations initiated by complaint are logged and assigned to a biologist. Incoming complaints are referred to the appropriate district deputy. Investigations referred from the State go to the PUE deputy who distributes them to the district deputy or commercial applicator team for investigation. Illness investigations are tracked using the Pesticide Illness Report Log from DPR. The chief deputy receives the monthly DPR illness report and tracks outstanding illnesses with the district deputies. If there is a reason that the 120-day timeframe cannot be met for an investigation, the district deputy will complete a Pesticide Illness Investigation Request or email the required information for a Time Extension (PR-ENF-097) and send it to our DPR Enforcement Branch Liaison (EBL) for approval. Upon concluding an investigation, the investigative report is submitted to the State, and the investigation is reported on PRAMR.

Biologists and deputies are trained to follow the protocol outlined in the Pesticide Use Enforcement Program Standards Compendium Volume 4, Inspection Procedures and Volume 5, Investigation Procedures. Sampling kits are maintained at the Santa Rosa and Sonoma offices to allow prompt response when samples need to be taken.

The district deputies conduct overview of biologists' work on a regular basis. Complicated investigations are typically assigned to the most experienced staff, though we often use such investigations as opportunity to train staff. Investigations are reviewed by the PUE deputy prior to submission to DPR. Any inadequacies in an investigation identified by the PUE or district deputies, or DPR will be addressed through training, either internal, or DPR will be asked to provide refresher training.

When special circumstances exist, cases are referred to DPR or other appropriate agencies. The County has worked collaboratively with DPR, the Department of Fish and Game, the Regional Water Quality Control Board, and County Environmental Health on complex cases over the past several years.

Biologists are familiar with priority criteria and will report any situations to the district deputy that may meet priority criteria. The district deputy then reports this to the chief deputy who notifies the EBL. As outlined in the cooperative agreement between the United States Environmental Protection Agency, Region IX, the California Department of Pesticide Regulation, and the California Agricultural Commissioners and Sealers Association, priority investigations will be initiated within 3 days of referral, a progress report will be submitted to DPR

within 15 days, and a completed investigation report within 45 days of completion of the investigation. Our policy is to respond to potential priority situations as quickly as possible.

Goals/Objectives

- Submit all investigations to DPR within the 120-day submittal period or request an extension in a timely and appropriate manner
- To ensure quality of reports, have PUE deputy review all illness reports prior to submittal to DPR
- Keep EBL notified of timeline changes for priority investigations

Enforcement Response

To realize the full benefits of a comprehensive and effective statewide pesticide regulatory program, DPR and the County Agricultural Commissioners must apply enforcement authority fairly, consistently, and in a timely manner. Our joint enforcement response to pesticide violations should emphasize worker and environmental safety.

Purpose of Sonoma County's Pesticide Enforcement Program:

- Focus on firm and fair action for pesticide violators
- Prompt response when laws and regulations have been violated
- Removal of any economic advantage or savings realized by noncompliance
- Consistent and appropriate application of enforcement responses
- Escalation in level of enforcement for repeat violators
- Outreach and education to ensure compliance

Enforcement Response Evaluation

Upon discovery of a noncompliance, the incident is reviewed by the PUE deputy and chief deputy. At this time a determination is made as to whether there is additional information that needs to be collected or any follow-up inspections that need to be performed. Once all evidence is collected, appropriate action is determined.

The level of action is determined by considering the type of noncompliance, history, and the enforcement response regulations. Compliance history is tracked with an electronic database. When noncompliances are found, respondent compliance history is reviewed by checking the database records. The violation in question is compared to the enforcement response regulations listed in Title 3, California Code of Regulations, taking into account any previous violations of a similar nature within the past two years. A documented compliance interview or other compliance action will be used when appropriate. The EBL is contacted for regulatory clarification and guidance as necessary.

After determining the appropriate class of the violation, the circumstances of the violation are weighed for their potential or actual damage to human health or the environment. The respondent's history and response, willful intent, or the

potential for negligence are also factored in to determine the amount of the fine within the ranges defined in regulation.

When issuing a civil penalty the requirements of Food and Agriculture Code 12999.5 are followed. A Notice of Proposed Action (NOPA) in a format approved by DPR is sent with evidence attached via certified mail to the respondent. In the NOPA, the respondent is given the opportunity to request a hearing within 20 calendar days, or to stipulate to the violation(s) and pay the fine. A brief description of the violation and appropriate code section is cited in the NOPA and are attached so that the language is consistent with the regulations. Additionally, attached to NOPAs is a guidance document titled *“Preparing for Your Administrative Pesticide Penalty Hearing”*.

An Administrative Civil Penalty log is kept for tracking. Upon completion of enforcement actions, enforcement/compliance action summaries are submitted to DPR with the PRAMR.

Goals/Objectives

- Continue to have the PUE deputy work closely with biologists needing additional help completing NOPAs, which will improve consistency, build staff confidence, and speed the process and issuance timeline
- Complete Enforcement/Compliance Action Summaries and submit to DPR at the completion of an enforcement action
- Record all enforcement actions on PRAMR
- All NOPAs for Class “A” are sent to DPR for review
- Send copy of the NOPA to DPR at the time it is mailed to the respondent

Summary

Our pesticide use enforcement activities will be internally evaluated during the year and at least annually. The overall ongoing review identifies compliance trends, workload, other program priorities, regulatory changes, inspection goal number progress, etc. Adjustments to the overall program activities are made as necessary and warranted.

The Sonoma County Agricultural Commissioner’s Office is committed to continuing a quality pesticide use enforcement program. We believe through implementation of this plan and our commitment to continue evaluating and improving core components of our work plan (Restricted Materials Permitting, Compliance Monitoring, and Enforcement Response), as well as other desired activities (outreach to pesticide users, ID number issuance, and use report follow-up), we will continue to meet the primary purpose of California’s pesticide regulatory program:

- Protection of the public and the environment
- A safe workplace for all pesticide handlers and agricultural workers
- The ongoing availability of pesticides essential to the production of food and fiber

Attachment to Pesticide Enforcement Work Plan for Sonoma County

Projected hours available: 4,900 licensed staff hours

Internal 2011 Inspection Goals:

- Application Inspections (this includes Pest Control Businesses and growers) = 40
- Field Worker Inspections = 10
- Structural Inspections (this includes structural fumigation and general pest)= 12
- Headquarter inspections (these would generally be in response to violations found in the field) = 5